
**UNITED STATES CIRCUIT COURT
OF APPEALS
FOR THE NINTH CIRCUIT.**

AUGUST E. MUENTER, as Collector of
Internal Revenue of the United States for
the First Collection District of Cal.,

Plaintiff in Error.

vs.

GEORGE D. BLISS, as Executor of the
last Will and Testament of George D. Bliss,
deceased,

Defendant in Error.

No. 2034

**REPLY BRIEF
TO
PETITION FOR REHEARING**

MARSHALL B. WOODWORTH,

Attorney for Defendant in Error.

FILED



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The plaintiff in error has filed a petition for re-hearing. While he urges nothing which merits any consideration, still he has fallen into such glaring error, in contending that there was a non-compliance with sections 3226, 3227, and 3228 of the Revised Statutes, with respect to the presentation of a claim, that we feel that it is our duty to submit this brief reply.

As stated by counsel for plaintiff in error, the present action is brought under section 3 of the Act of

June 27, 1902, (32 Stats. L. 406). commonly known as the "Refunding Act".

Under this act, the Honorable Attorney General has held that the provisions of the Act of 1902 are special and apply to a particular class of obligations against the Government. and, being special, these claims are not governed by the provisions of a prior general statute, section 3228, Revised Statutes.

The learned Attorney General further held that suits for the recovery of money due under the "Refunding Act" of June 27, 1902, *are not actions for the recovery of taxes, but for money held by the Government in trust for the benefit of the parties to whom it rightfully belongs.*

See Opinions of Attorney General. Vol. 26.
p. 194, 197, 198.

Says the learned Attorney General: "It will be observed that under the provisions of this statute Congress has granted a right of repayment, regardless of any condition that may have heretofore operated as a bar to such repayment. The statute is an acknowledgement by Congress of a supposed moral obligation: a provision as a bounty of the Government."

It has even been held that the fact that no protest was made against the payment of the tax is immaterial and that a recovery may be had under the "Re-

funding Act", notwithstanding that no protest was made.

Thacher et al. v. The United States, 149 Fed. Rep. 902.

We therefore respectfully submit that the argument advanced by the learned counsel for plaintiff in error has absolutely no relevancy or applicability to the present case, and that the petition for rehearing must be denied.

Respectfully submitted

MARSHALL B. WOODWORTH

Attorney for defendant in error.

